ACWS
Alberta Council of Women's Shelters

DOMESTIC VIOLENCE: CHILD CUSTODY, ACCESS AND RECOMMENDATIONS FOR REFORM

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CONTENTS

Heading	Page
Executive Summary	3
Terms Used in This Brief	4
Summary of ACWS Recommendations	5
Background	6
Community Safe Visitation Program	7
Development of Supervised Visitation Centres Across Alberta	8
Relationship Between the Courts and Sheltering Agencies	10
Awareness and Education for Key Stakeholders	11
Custody and Access: A Risk Assessment Approach	11
Custody and Access: Recommendations for Legislative Reform	14
Integration of Child Welfare Legislation	18
Service Issues	19
Appendix A: Risk Assessment Format	21
Appendix B: Special Issues in Visitation Disputes with Allegations of Domestic Violence	24

EXECUTIVE SUMMARY

Custody and access legislation in Canada has lagged behind other political jurisdictions, such as New Zealand, Australia and some American states, in terms of identifying family violence as a factor that must be considered in weighing the "best interests" of children. Too often, judicial decisions pertaining to custody and visitation are weighted in favour of the assumed value of "parental right of access to the child" without considering the safety of the child and victimized parent. This has led to tragic consequences. Related to this, a significant number of individuals who have been abused and their children experience further victimization by the legal system after separation. Rather than ending the violence, parents who have been abused subsequently encounter a variety of new problems in their efforts to keep themselves and their children safe. These can include escalating separation violence, accusations of "parental alienation", being declared an "unfit" parent and losing custody of children to the abusive partner.

This report highlights an opportunity for the Government of Alberta to be a leader in the creation of safe visitation opportunities including supervised visits and monitored exchanges for families affected by domestic violence. The *Community Safe Visitation Program* is presented as one model, and practical recommendations for the development of Supervised Visitation Centres across the province are offered. This document is based upon the assertion that the safety of children and custodial parents needs to be the overriding consideration in any program of court-ordered supervised visitation and, to assist in this, an approach to domestic violence risk assessment is provided. Also the report contains numerous recommendations for legislative changes to both federal and provincial legislation dealing with custody and access issues. ACWS recognizes, however, that changes in legislation aimed at protecting vulnerable families without the requisite resources are counterproductive.

The key points highlighted in this brief are:

1) A recommendation that the Alberta provincial government develop and fund supervised visitation programs throughout Alberta;
2) Domestic violence training is a critical component in the development and operation of supervised visitation centers;
3) In custody and access disputes where there is known or suspected domestic violence, the courts need to make use of the expertise of sheltering agencies;
4) Comprehensive risk assessments be mandatory in cases where there are allegations of abuse or where signs are present that indicate a high- risk situation;
5) There should be routine screening for spousal abuse in all custody and access cases;
6) Family law legislation must recognize domestic violence as a factor in determining custody and access issues and prioritize the personal safety and security of individuals who have been abused and their children;
7) There is a need for broad based domestic violence training.

TERMS USED IN THIS BRIEF

Domestic Violence, Family Violence, Domestic Abuse

The Calgary Domestic Violence Committee (CDVC) defines domestic violence as:

> ... the attempt, act or intent of someone within a relationship, where the relationship is characterized by intimacy, dependency or trust, to intimidate either by threat or by the use of physical force on another person or property. The purpose of the abuse is to control and/or exploit through neglect, intimidation, inducement of fear or by inflicting pain. Abusive behaviour can take many forms including: verbal, physical, sexual, psychological, emotional, spiritual, economic and the violation of rights. All forms of abusive behaviour are ways in which one human being is trying to have control or power over another.

Supervised Visitation (Access)

"Contact between a child and adult(s), usually a parent or an adult in a parenting role, that takes place in the presence of a third person who is responsible for ensuring the safety of those involved" (Strauss, 1995).

Monitored Exchange

Safe and conflict-free transfer of children from the custodial adult to the visiting adult for the purpose of access visits without the need for contact between the adults.

Individual or Person Who Has Been Abused, Parent Who Has Been Abused

These terms will be used to refer to those individuals who have experienced some form of domestic violence. The terms "victim" and "survivor" have been intentionally avoided in this brief in an effort to avoid labels and the assumptions that accompany them.

Abusive Person, Abusive Partner, or Individual Who Uses or Chooses Abusive Behaviour

These terms will be used to refer to the individual who is perpetrating violence or abuse on another person(s). The YWCA Family Violence Prevention Centre & Sheriff King Home acknowledges the controversy of labelling an individual for their behaviour, instead of naming or identifying the behaviour as abusive.

This brief acknowledges that victims of domestic violence are of both sexes. However, because women suffer more severe consequences, this document will use the feminine pronoun when referring to the person who has been abused and the masculine pronoun when referring to the person who acts abusively. Therefore, for the pronoun "her", read him/her and for "she", read she/he.

SUMMARY OF ACWS RECOMMENDATIONS

- That the Alberta provincial government develop and fund supervised visitation programs throughout Alberta.
- That representatives from ACWS and other Alberta experts in the field of domestic violence form a "*Supervised Visitation Advisory Council*" to work in collaboration with the Alberta government to oversee the development of supervised visitation centers.
- That an accreditation body (*Alberta Association of Supervised Visitation Centres*) made up of representatives from ACWS and other domestic violence experts be established to provide certification to supervised visitation sites that are adhering to provincial standards and guidelines.
- That courts make use of the expertise of sheltering agencies in custody and access disputes where there is known or suspected domestic violence.
- That family law legislation recognize domestic violence as a factor in determining custody and access issues.
- That in determining the "best interests of the child", paramount consideration be given to the personal safety and security of the child and the parent who has been abused.
- That comprehensive risk assessment be mandatory in cases where there are allegations of abuse or where signs are present that indicate a high-risk situation.
- That there be routine screening for spousal abuse in all custody and access cases.
- That ACWS provide broad based domestic violence training and certification to decision-makers and service providers in the area of custody and access.
- That public awareness and educational information be developed for potential user of supervised visitation programs and the general public.

BACKGROUND

Domestic violence not only affects the direct victims - usually women, but also children who live in families where spousal abuse is a reality. According to a recent survey, 37% of domestic violence victims reported that children had seen or heard violence in the home within the last five years (Canadian Centre for Justice Statistics, 2000). This equates to approximately half a million Canadian children who have witnessed abuse between their parents. The Calgary Police Service reports that children are present in 58% of domestic incidents (1997). Living with this terror has been found to have devastating effects on children's lives, leaving them scarred and hurt, and marring their ability to grow and develop in healthy ways (Grych, Jouriles, Swank, McDonald & Norwood, 2000; Jaffe, Wolfe & Wilson, 1990; Kerig, 1998; Knapp, 1998; Margolin & Gordis, 2000).

An individual's decision to separate from her abusive partner threatens his sense of control, often leading to an escalation of violence and increased risk for parents who have been abused and their children. The "Canadian Panel" survey[1], released in November 1993 revealed that approximately 20 per cent of women who had been abused by former partners reported violence at the time of, or following separation. In 35 per cent of these cases, the violence actually increased in severity after separation. Visitation can be a time of particular volatility as it provides the small window of opportunity, maybe the only opportunity for an abusive partner to focus his desperate efforts to regain control[2]. Child visitation and exchanges create opportunities for abusive individuals to follow through on their threats to abduct children. Abduction of the child or refusal to return the children after scheduled visits is a manipulative attempt by the abusive partner to coerce the person who has been abused into returning. Concerns for safety can be so great that many parents who have been abused contemplate violating a court order, or even fleeing with the child, to avoid the dangers of sending the child on an unsupervised visit with an abusive parent.

Abusive individuals will often use custody and/or access visits as a tool to humiliate, dominate, control and punish their partners for taking action to protect their children or punish them for leaving the abusive relationship. The reality of family violence is not currently reflected in federal or provincial family law legislation. There is a critical need for the development of new laws and new services designed to address this important area of concern.

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[1] Canadian Panel on Violence Against Women, *Changing the landscape: Ending violence – achieving equality* (Ottawa: Ministry of Supply and services Canada).
[2] Sheeran, M., Hampton, S. (1999) Supervised visitation in cases of domestic violence, *Juvenile and Family Court Journal*, 50(2), pgs. 12-26.

COMMUNITY SAFE VISITATION PROGRAM
(Safe Visitation)

The safety of all children and adults, including program staff shall be of primary importance and will guide all decisions.

Given that safety is addressed, the child's best interest will be the first priority in any decisions made.
(-YWCA Family Violence Prevention Centre & Sheriff King Home)

Domestic violence service providers in Calgary have long recognized the need for a supervised visitation and access program[3]. In November 2002, the *Community Safe Visitation Program* (*Safe Visitation)* began as an 18-month pilot at the YWCA Family Violence Prevention Centre and Sheriff King Home (YWCA Sheriff King). *Safe Visitation* provides both supervised visitation and monitored exchange services for families affected by domestic violence. Supervised visitation and monitored exchange programs are services created to address the safety needs of children and families. *Safe Visitation* is designed to meet the urgent need of protected settings for the safe transfers and visitation of children with non-custodial parents. The visitation project is the result of collaboration between the *YWCA Sheriff King*, *HomeFront*, and other key domestic violence and social service agencies in Calgary and will contribute to the continuum of specialized domestic violence services in the community.

Anticipated outcomes of the project include: increased safety for parents and children during visits and exchanges, provision of a healthy environment for supervised visits between children and non-custodial parents, decreased stress for both parents and children, professional reports completed by qualified staff, and referrals for both children and their parents to appropriate treatment and community resources as required. Research and evaluation of *Safe Visitation* will occur in partnership with RESOLVE Alberta.

The Community Safe Visitation Program manual[4] is provided along with this report as one model for the operation of visitation centres. However, it should be noted that this program is new and it is anticipated that modifications will be made as deemed necessary.

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[3] For the purposes of this document, "supervised visitation" includes supervised access and monitored exchange.

[4] This manual was developed in consultation with the Family Violence Prevention Program (Manitoba), Family and Children's Services of the District of Rainy River (Ontario), Children's Aid Society of London and Middlesex (Ontario), and the Duluth Family Visitation Center (Minnesota).

DEVELOPMENT OF SUPERVISED VISITATION CENTRES ACROSS ALBERTA

"Supervised visitation centers are an essential component of an integrated community intervention system to eliminate violence and protect its victims. Visitation centers may reduce the opportunity for retributive violence by batterers, prevent parental abduction, safeguard endangered family members, and offer the batterer continuing contact and relationship with their children."

(- Model Code on Domestic Violence, 1994 National Council of Juvenile and Family Court Judges, U.S.A.)

ACWS recommends that the Alberta provincial government provides adequate funds to establish and support supervised visitation programs throughout Alberta. Government funding is critical for a number of reasons:

a) In the absence of government funding, supervised visitation sites are unlikely to develop across the province. Those that manage to open will struggle financially, resulting in site closures, long waiting lists and limitations on the amount of time clients may use the service;

b) Inadequate funding reduces the number of hours per week that centers can operate and this leads to difficulties in complying with supervision orders that stipulate certain times and/or certain days that visits are to occur.

c) Visitation centers are required throughout the province and need to be considered as part of an integrated provincial response to family violence.

ACWS recommends the following approach to the development of visitation centres throughout the province:

PHASE 1

- Representatives from ACWS and other Alberta experts in the field of domestic violence form a "*Supervised Visitation Advisory Council*" to work in collaboration with the Alberta government to oversee the development of supervised visitation centers.

- ACWS recommends that judges, child welfare representatives, police officers, and victim advocates provide input at the development stage as critical stakeholders. Their involvement will support the development of clear expectations among courts and visitation providers, thus fostering an understanding of how services can best assist families in court.

- ACWS together with representatives from the province develop a "Best Practices" manual outlining provincial standards and practice guidelines for supervised visitation/exchange centers.

PHASE 2

- The ministry responsible initiate a 3-year *Supervised Visitation Project* involving 7 visitation sites throughout Alberta. Recommended sites include Grande Prairie, Medicine Hat, Fort McMurray, Edmonton, Calgary, Lethbridge and Red Deer.
- ACWS recommends that the Alberta government issue a request for funding proposals.
- Domestic violence stakeholders in each targeted community work collaboratively to develop a plan for the development of a supervised visitation center in their locale and submit a proposal.
- Peer reviewers (representatives from the *Supervised Visitation Advisory Council*) study proposals and make funding recommendations to the ministry responsible.
- Successful applicants sign a contract with the ministry responsible.
- A process for the ongoing monitoring and evaluation of project sites be established.

PHASE 3

- Supervised visitation sites work closely with the sheltering agency or agencies in their local community.
- A comprehensive evaluation of the project be conducted by RESOLVE Alberta. Based on positive evaluation results, funding of the *Supervised Visitation Project* be continued and become the *Supervised Visitation Program*.
- The program eventually expand to provide supervised visitation sites in each of the 11 court districts in Alberta. Attached to each of these sites are government supported treatment and counseling services for women, men and children affected by domestic violence.
- An accreditation body (Alberta Association of Supervised Visitation Centres) made up of representatives from ACWS and other domestic violence experts be established to provide certification to supervised visitation sites that are adhering to provincial standards and guidelines.

Domestic violence training[5] will be a critical component in the development and operation of supervised visitation centers. It is recommended training be provided for:

- Police officers and officers of the court
- Members of the Family Law bar
- Mediators
- Custody evaluators
- Mental health professionals
- Victim advocates
- Professionals engaged in risk assessment
- Child Welfare
- Staff and volunteers at the supervised visitation sites

RELATIONSHIP BETWEEN THE COURTS AND SHELTERING AGENCIES

ACWS recommends that in custody and access disputes where there is known or suspected domestic violence, the courts make use of the expertise of sheltering agencies.

- Courts consult with sheltering agencies for information, education, and sensitization to domestic violence issues;
- Courts consult with sheltering agencies in drafting visitation orders to ensure that the terms set out are appropriate given the level of risk to the individual who has been abused individual and her child(ren);
- As part of the visitation order, courts stipulate that abusive individuals attend an individual or group treatment program offered by a sheltering agency. The government needs to ensure an adequate level of funding for these programs.
- Courts refer abused parents and their children to individual or group counseling programs offered by sheltering agencies;
- Sheltering agencies with supervised visitation and monitored exchange programs provide courts with a safe visitation/exchange option;
- Sheltering agencies are particularly suited to the task of providing domestic violence training and certification to supervised visitation program staff. Before issuing a supervision order, ACWS recommends that the court contact the certification coordinator to locate a qualified service provider.
- Courts screen for family violence prior to any mediation being ordered. A relationship based on power and control does not lend itself to mediation and should not be used when family violence is present.

[5] Domestic violence training must be individualized to meet the specific needs of stakeholders, taking into account their professional role and current level of knowledge around domestic violence in general and custody and access issues in particular.

AWARENESS AND EDUCATION FOR KEY STAKEHOLDERS

The development of supervised visitation programs across Alberta will involve developing awareness and education for key stakeholders. These include child welfare, the defense bar, judges, crown prosecutors, mediators, referral agencies, children's advocate, legal aid, family law office, research bodies like RESOLVE, and the wider community.

ACWS recommends developing awareness and education through:

- The development of a video introducing supervised visitation including footage of a simulated child and parent engaged in a visit;
- Public relations and social marketing;
- The development of a supervised visitation booklet designed for children (or ideally for the custodial parents and children to read together) in order to introduce them to the program in advance of their first visit;
- A media campaign.

CUSTODY AND ACCESS: A RISK ASSESSMENT APPROACH

"There should be routine screening for woman abuse in all custody and access cases"
(- In the Centre of the Storm – Durham Speaks Out)

Mandatory comprehensive risk assessments need to be completed in cases in which there are allegations of abuse or where signs are present that indicate a high- risk situation.

There are circumstances in which the only safe visitation is *NO* visitation.
(-Alberta Council of Women's Shelters)

Screening for risk is important to visitation providers and courts. Courts will often request risk or lethality assessments (at the abusive partner's expense) to determine the level of risk that an abusive individual poses to the family's safety. Risk assessments are useful for judges in deciding whether visits should occur in a supervised or unsupervised manner or whether visits should take place at all. When assessing risk for repeated domestic violence, it is recommended that multiple sources and multiple methods be employed. A sample format is provided in Appendix A.

Domestic violence risk assessments are <u>not</u> psychiatric or psychological assessments. They differ in several important respects including:

1) **The Cost**: Psychological assessments are expensive, typically costing $2500+ *whereas the cost involved in completing a* domestic violence risk assessment would rarely exceed $900.

2) **Education and training of the assessor:** Domestic violence education is not included in standard training programs for mental health professionals, including psychiatry or psychology. Developed expertise in domestic violence is available through ACWS members to ensure and support training of qualified domestic violence risk assessors throughout Alberta.

3) **Nature of the assessment**. Risk assessment for domestic violence involves an assessment of risk factors that are not the focus in a typical standardized psychological/psychiatric assessment. These include:

    - Escalation of physical or psychological abuse
    - Access to weapons and a history of using weapons
    - Suicidal or homicidal ideation, threats or attempts
    - Change in substance use/abuse patterns
    - Criminal harassment or other surveillance/monitoring behaviour
    - Jealously/obsessiveness about, or preoccupation with, the person being abused
    - Mental health concerns connected with violent behaviour
    - Other criminal behaviour or injunctions
    - Increase in personal risk taking (e.g. violation of restraining orders)
    - Interference with partner's help-seeking attempts
    - Imprisonment of spouse in her home
    - Threats made against children
    - Abusive behaviour towards children in the home
    - Symbolic violence including the destruction of pets or property
    - Attempts by the person being abused to flee her partner or to terminate the relationship
    - Abusive partner's access to his spouse or her family

ACWS makes the following recommendations related to domestic violence risk assessment:

- Legislation require that mandatory risk assessments be conducted by experts trained in domestic violence;

- Provisions are made that relevant court information pertaining to the litigants is available to domestic violence risk assessors;

- The judge must have the authority to expedite the recommendations of the assessor as to what level of contact, including no contact, is in the best interests of the person who has been abused and her children
- The court have a responsibility to consider the opinion of expert assessors;
- Legislation must mandate publicly funded resources to enable trained professionals to provide the necessary risk assessments to the court;
- ACWS spearhead the training of domestic violence risk assessors throughout Alberta and establish a certification process;
- That domestic violence risk assessors meet the following qualifications:
    - A Masters level education in social work or psychology
    - Expertise in the area of domestic violence
    - Expertise in domestic violence risk assessment
    - Training in assessing suicide/homicide
    - Training in mental status examination
    - Registration with a professional body
    - Excellent written and communication skills
- Written risk assessment reports to the court include opinion and supporting evidence. The report should include:
    - Sources of information (arrest report, victim, etc.)
    - Presenting information summary divided into:
        - psychosocial history (including criminal history and history of assaultive and abusive behaviour)
        - psychosocial adjustment (including circumstances around the most recent instance of spousal assault and screening for mental illness)
    - Risk opinion and recommendations
    - Discussion of risk management, including a safety plan for family members at risk.

CUSTODY AND ACCESS: RECOMMENDATIONS FOR LEGISLATIVE REFORM

The principle objective of family law legislation (as well as laws that pertain to child protection, criminal, and mental health) must be the personal safety and security of individuals who have been abused and their children.

The well being of the child and the abused parent must be the primary consideration in determining the best interest of the child when there has been a finding of domestic violence.

The Alberta Council of Women's Shelters believes that custody and access provisions in the legislation can be greatly improved by recognizing the right of women and children to live without violence. Visitation decisions involving domestic violence are complex and need to be evaluated differently than visitation where domestic violence is not an issue (See Appendix C). **The following points need to be reflected in provincial and federal legislation dealing with custody and access**[6].

a) **Domestic violence needs to be clearly defined in the Canadian Divorce Act and the Alberta Domestic Relations Act.** As in *New Zealand's Domestic Violence Act (1995)*, the definition should include psychological and emotional abuse as well as physical and sexual abuse.

b) **The legislation needs to specifically acknowledge the significance of domestic violence to custody and access issues**. Federal and provincial law must consider the need to protect the child from physical and emotional harm that may be caused by being subjected to abuse or by being directly or indirectly exposed to abuse towards another person. Based on the *Model Code on Domestic and Family Violence* (approved by the National Council of Juvenile and Family Court Judges in 1994) federal and provincial family law should include the provision that "A court may award visitation by a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made."

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[6] These recommendations are drawn from a number of sources including:
(a) Bain, P. (Summer 2000). *Family violence: an essential in factor in determining custody and access.* BC Institute Against Family Violence Newsletter: British Columbia.
(b) Bala, N., Bertrand, L.D., Paetsch, J.J., Knopper, B.M., Hornick, J.P., Noel, J.F., Boudrea, L., Miklas, S.W. (1998). *Spousal violence in Custody and access disputes: Recommendations for reform.* Status of Women Canada, McLaughlin, A. (Ed), Ottawa.
(c) 1994 National Council of Juvenile and Family Court Judges. *Model Code on Domestic and Family Violence.*

c) **The safety of the abused parent and child should always be the paramount concern of the court in making an order for access.**
As in New Zealand, Canadian legislation should also specifically set out the factors to consider when determining whether or not a child will be safe while a violent party has custody or access to the child. The factors set out in the New Zealand legislation are:

i. The nature and seriousness of the violence used;
ii. How recently the violence occurred;
iii. The frequency of the violence;
iv. The likelihood of further violence occurring;
v. The physical or emotional harm caused to the child by the violence;
vi. Whether the non abusive parent considers that the child will be safe while the violent party has custody of or access to the child, consents to the violent party having custody of or access (other than supervised access) to the child;
vii. The wishes of the child, if the child is able to express them, and having regard to the age and maturity of the child;
viii. Any steps taken by the violent party to prevent further violence occurring;
ix. Such other matters as the Court considers relevant.

The Court should also consider whether the primary caregiver feels safe from further violence.

d) **An acknowledgment that maximum contact is NOT always in the best interest of the child**. Maximum contact can put women and children in danger. It can actually undermine the best interest of the child and expose women and children to ongoing violence and harassment.

e) **"Shared Parenting must not be legislated"**. Shared parenting has not worked in any jurisdictions where it has been implemented. If violence is not a primary consideration, shared parenting means that the mother and child will be exposed to ongoing harassment and violence according to a court-imposed schedule. The "Australian Family Law Reform Act 1995: The First Three Years" states that the safety of children has been compromised by shared parenting reforms as they have created greater opportunity for harassment and interference in the life of the mother and her children.

f) There must be a **statutory presumption** that it is not in the best interests of a child to be placed in the custody of or have unsupervised visits with a parent who has perpetrated acts of family violence against the child, the child's siblings or parent.

In determining whether the presumption has been overcome, legislation should require the court to consider the following factors:

- Whether the abusive person has demonstrated that giving sole or joint physical or legal custody of a child to him is in the best interest of the child;

- Whether the abusive person has demonstrated clear evidence of change that ensures the safety of the primary caregiver and the children;
- If the abusive person is on probation or parole, whether he is restrained by a protective order granted after a hearing, and whether he has complied with its terms and conditions;
- Whether the abusive individual has committed any further acts of family violence or intimidation.

g) Canadian statutes should provide that an abused parent is able to request **non-disclosure of her address** if she is concerned about her safety or the safety of her children. Court documents can be served on a third party such as a lawyer.

h) Legislation should direct the courts not to hold **flight from the family home due to a reasonable fear of family violence** against the fleeing parent. Sometimes individuals who are abused flee the family home in order to preserve or protect their lives and sometimes do not take dependent children with them because of the emergency circumstances of flight; because they lack resources to provide for the children outside the family home; or because they conclude that the abusive partner will hurt the children, the parent who has been abused, or third parties if the children are removed prior to court intervention.

i) **Requirement of Supervised Access and Monitored Exchange** in cases where the court is satisfied that the parent has used violence against the child or the other parent of the child. However this will occur only when adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made. The court should be granted broad authority to impose *whatever conditions* are deemed necessary for the purpose of protecting the safety of the child and the other parent while the right of access conferred by the order is being exercised. This would include pick up and return of the child to the custodial parent.

Such conditions might include 1) ordering the exchange to take place in a protective setting, 2) ordering that visitation be supervised, 3) ordering the abusive person to complete a counseling or intervention program, 4) ordering the abusive person to pay for supervision or post a bond for the return and safety of the child, and 4) prohibiting overnight visitation.

Courts ordering supervised visitation should:

- Articulate both the factual basis for and the desired outcome for their orders to ensure that there is a goal for supervised visitation and that supervised visitation is seen as a means to a end and not the end itself;
- Schedule a review by the court to determine compliance with the order (at the time of the initial order);
- Allow visitation providers to refuse cases that providers determine they cannot serve adequately or safely;

- Inform visitation centers of other known services the abusive partner is utilizing;
- Encourage and promote the availability of services to assist with case management and oversight;
- Provide guidelines for informal supervision that specifically set forth the authority and responsibility of the informal supervisor. This may include entering into a written contract;
- Respond promptly to noncompliance to communicate the importance of visitation orders and the courts lack of tolerance for noncompliance.

j) ACWS recommends that there must be a **statutory presumption that courts will not change a supervised order to an unsupervised order** until the court is satisfied beyond a reasonable doubt that the safety of the primary caregiver and the children is ensured.

k) There needs to be an **investment in new technology** that allows judges to have access to comprehensive information on all matters before the courts. This would allow a judge to make a custody or access order that is consistent with a criminal no contact or civil restraining order.

l) Both family court counsellors and individuals contracted by the court to conduct custody and access assessments should be **required by law to take family violence training**.

m) Federal and provincial legislation should specifically authorize a judge to **set aside an agreement** made under the threat of violence.

n) Provincial and territorial legislation should provide for **expeditious and inexpensive access to the courts** in cases of domestic violence

o) Provincial and territorial legislation should provide for **expeditious granting of interim custody and access orders** in cases of domestic violence

p) Domestic violence risk assessors who are not from the same **cultural background** as the parents should be required to consult a cultural interpreter to explain standards of conduct that may be different from those in the assessor's culture.

q) ACWS supports recommendation #8 put forward by the Alberta Unified Family Court Task Force (2002) that **family violence (adult criminal charges) should not be included in the jurisdiction of the unified family court**. Domestic violence offences are crimes and must not be dealt with as private family matters.

INTEGRATION OF CHILD WELFARE LEGISLATION

Women are encouraged to disclose allegations of child abuse in custody and access proceedings. If women do, they may be accused of "parental alienation syndrome" and run the risk of losing custody to the abusive partner. If women don't say anything and the abuse continues, child welfare may apprehend the children and accuse the women of failing to protect the children.

Child Welfare legislation needs to be integrated with both family law and the Divorce Act. ACWS recommends that Child Welfare legislation address the needs of children during a custody and access dispute. Custody and Access disputes or a divorce should not stop an investigation that meets other requirements. It should not matter if parents are together or not, because we know the abusive partner often uses the children to get back at the mother. Presently, child welfare might refuse to do any investigation during a custody and access dispute.

As well, if custody has been finalized and the father is still abusing his former partner, child welfare should investigate. However, present practice now sees children being apprehended and placed in foster care while Child Welfare investigates. This approach gives women one reason, among many others, to keep quiet about the abuse that occurs. We believe that the investigation needs to take place, but rather than apprehend the children, Child Welfare should conduct their assessment and take measures to help keep the mother and the children safe.

The Child Welfare Act needs to define how service providers respond to children who are exposed to violence: ACWS recommends that the act state that children who witness abuse in their homes are deemed to be in need of timely integrated prevention and intervention services. This intervention must include a thorough assessment and adequate integrated resources to keep the person who is being abused and the children safe (e.g., financial support, adequate housing, safety plans and timely access to services for all family members rather than the apprehension of children prior to the completion of the assessment).

While a child may be in need of protection when family violence occurs, this does not apply in all cases. ACWS does not support family violence as a sole ground for protection and apprehension. It is the abusive partners' actions that may emotionally or physically injure a child, not the guardian's failure to protect the child, when the guardian is herself being abused. The child's need for safety, continuity and stability can be better met by helping to keep both the person who has been abused and the children safe.

SERVICE ISSUES

AVAILABILITY OF LEGAL AID

The economic reality for the majority of women fleeing abusive relationships is a decline in income after marital separation. Without access to appropriate legal representation (which for many women is possible only through legal aid) women do not have access to justice. In many cases, women appear in court un-represented or under-represented to face ex-partners who have been able to hire competent lawyers.

ACWS recommends that the Federal Government should require all provinces to provide civil legal aid in all cases where there is family violence and a contested custody or access application and the person who has been abused cannot otherwise afford a lawyer.

MEDIATION

Legislation should restrict the use of mediation in cases where there is family violence. A mediator who receives a referral or order from a court to conduct mediation should screen for the occurrence of domestic violence between the parties. If there is a restraining order in place, the court should not order mediation or refer either party to mediation. If there is an allegation of domestic violence and no restraining order, the court may order mediation or refer either party to mediation only if the following conditions are met:

- A certified mediator who has completed advanced domestic violence training provides mediation;
- Safety checks are in place to protect the safety of the person who has been abused and ensure that there is not an imbalance of power between the parties;
- The person has been abused is permitted to have a supporting person present at mediation including but not limited to a lawyer or advocate.

COMMUNITY BASED DOMESTIC VIOLENCE SERVICES

Without adequate resources, any intervention strategy will not work. Legislation based on providing a supportive environment to children and families without the resources is counterproductive. ACWS recommends:

- More outreach and follow-up services for women and their children in and/or leaving an abusive partner. Shelters are still working under a 1985 staffing model, which does not include outreach and follow-up. This needs to change.
- Specialized and available treatment programs for child witnesses of family violence, for abused women themselves and for the abusive partner.

- The importance of treatment and counseling programs should be recognized in provincial legislation.
- Funding for supervised visitation programs needs to be adequate to insure accessibility of service. Programs should be open five days a week and two days on the weekend in order to accommodate supervision orders that stipulate certain days and times.
- Legislation and programs dealing with domestic violence need to be monitored and evaluated.

APPENDIX A

RISK ASSESSMENT FORMAT

When assessing risk for repeated domestic violence, it is important that multiple sources and multiple methods be employed. In general this process will include[7]:

1) Interviews with the abusive individual and the person who was abused. These interviews should cover the following areas with respect to the person who has acted abusively:

a) History of abusive individual's personal interaction / social history
- Alcohol and drug abuse history and current use
- Financial stability
- Employment stability
- History of violent behaviour to present
- Mental status
- Previous counseling involvement
- Criminal history
  - Past assault on family members
  - Past assault on strangers/acquaintances
  - Past violation of conditional release or community supervision
- Disturbed relationship pattern
  - Conflicts with neighbors
  - Conflicts with employers
  - Conflicts with children
  - Conflicts with adults
- Patterns of isolation / current social support network
- Current life stressors

b) Relationship history (intimate partner)
- Spousal assault history (past physical/sexual assault, sexual jealousy, past use of weapons or death threats, recent escalation in severity or frequency, past violation of no contact orders, extreme minimization or denial, attitudes that support or condone assault
- Most recent offence (severe and/or sexual assault, use of weapons and/or threats of death, violation of no-contact orders)
- Relationship between the abusive person and his/her child (This might involve observing the parent-child interaction over a couple of sessions or obtaining third

[7] Adapted from Kropp, R., Hart, S., Webster, C., & Eaves, D. (1995). *Manual for the Spousal Assault Risk Assessment Guide*, The British Columbia Institute Against Family Violence.

party reports about the parent's treatment of the child during critical period)
- Multiple separations, accusations of infidelity, drug use, or intimate partner using inappropriate behavior
- Obsessive thoughts or behaviour towards intimate partner

c) Information on the abusive person's family of origin, to include any dysfunction, including:
- A history of physical and emotional abuse inflicted by the abusive person's parent or parent figure
- A history of neglect or abandonment
- Alcoholism or drug abuse
- Parent (spouse to spouse) violence
- Mental health disorders
- Multiple primary caretakers
- Frequent residence changes
- Sibling violence
- Divorce or single parent upbringing
- Parental loss

d) Peer violence and childhood problems to include:
- School problems
- Arrest as a juvenile
- School discipline
- Health problems
- Suicide attempts as a child
- Drug and alcohol abuse

2) Standardized measures of physical and emotional abuse

3) Standardized screening measure for mental illness

4) Standardized measures of drug and alcohol abuse

5) Review of collateral records, including
- Police reports (may contain information regarding physical evidence of assault such as cuts and bruises, eyewitness reports, arresting officer's observations about the abusive person's behaviour, considerations about the safety of the person who has been abused at the time of the arrest)
- Criminal records (helpful in determining past arrests/convictions for assault and breaches of conditions of bail, probation, parole, and so forth)
- Victim impact statements provide a sense of the physical and emotional effects on the individual who has been abused

6) An assessment of lethality
The most widely recognized and utilized risk assessment tools include:

- Spousal Assault Risk Assessment Guide (Kroop et al., 1999)
- Danger Assessment (Campbell, 1995)
- Domestic Violence Screening Inventory (Williams & Houghton, 1999)
- Kingston Screening Instrument for Domestic Violence (Gelles, 1998)

7) Release of information for exchange of information between:

- The person who has been abused
- The court
- Previous therapists
- The abusive partner's family, as needed

(8) Client Contract Form (a signed agreement)

(9) A written risk assessment report to the court that includes:

- Presenting information summary
- Sources of information (arrest report, victim, etc.)
- A client assessment
- Recommendations (including a safety plan for all family members identified as being at-risk)

APPENDIX B

SPECIAL ISSUES IN VISITATION DISPUTES WITH ALLEGATIONS OF DOMESTIC VIOLENCE

Issues	Normal Visitation Dispute	Visitation Dispute with Allegations of Violence
Central issue	Promoting children's relationship with visiting parent	Safety for the individual who has been abused and her/his children
Focus of court hearing	Reducing hostilities	Assessing lethal nature of violence
Planning for future	Visitation schedule that meets needs of children	Consider no (suspended) visitation or supervised visitation.
Assessment issues	Children's stage of development, needs, preferences Parents' abilities	Impact of violence on person who has been abused and her/his children Abusive parent's level of responsibility Safety plan of individual who has been abused
Resources required	Mediation services Divorce counselling for parents and children Independent assessment/evaluation	Specialized services with knowledge about domestic violence Supervised visitation centre Coordination of court and community services Well-informed lawyers

Adapted from chart developed by Peter G. Jaffe, PhD, C. Psych. For The Family Prevention Fund Cited in: Jaffe, P.G., Geffner, R. **Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service, and Legal Professionals**. Children Exposed to Marital Violence: Theory, Research, and Applied Issues. Holden, G.W., Geffner, R. Jouriles, E.N. (Eds). American Psychological Association, Washington, DC.